

E. PALESTINE VILLAGE COUNCIL 3/12/18 85 N. MARKET ST 7 PM

Mayor Zuch called the meeting to order, present was Mr. Cohen, Mr. Hall, Mr. Simpson, Mr. Todd, Mr. Walker and Mr. Yokley. Also present was Village Manager Pete Monteleone, Law Director Dave Powers, Finance Director Traci Thompson and Clerk Misti Martin. The minutes of the 2/26/18 meeting were approved on a motion by Mr. Walker seconded by Mr. Cohen all in favor. The February 2018 reports were approved on a motion by Mr. Simpson seconded by Mr. Cohen. All in favor. There were no Clerks or Mayor's Reports.

AGENDA: Jerod Berger was on the agenda but was not present at the meeting.

MANAGER: Manager Monteleone stated he gave Council a written report. He asked Mr. Cohen to speak on the issue at 130 Concord Dr. Mr. Cohen stated he gave council a proposal to start discussion as a way to solve the issue on Concord Dr., he stated the Law Director has drawn up an encroachment agreement in regards to the utility easement, he said it is a standard legal procedure for solving this problem. He said once that is acknowledged as being acceptable it will need to be attached to legislation passed by Council, the legislation would acknowledge the Kotch's violation of the zoning code, the encroachment agreement and the violation of a variance given by the Zoning Board. It would acknowledge the impracticability and cost of moving or tearing down of the home it would also acknowledge the payment of a \$500 under the encroachment agreement along with the assumption of the Kotch's of any and all liability that could arise with their use of the easement and would also indemnify the Village along with a clause authorizing the Zoning Inspector to authorize a an occupancy permit. Atty. Powers stated he cannot see any appeal rights coming from the Zoning Board, he said they are the appeals right for decisions coming from the Zoning Inspector but there is no next from the Zoning Board. Mr. Cohen stated that in doing research he found in most other zoning codes that decisions from the Zoning Board could be appealed to Council but we do not have that clause but we should consider adding it. The only other option is a lawsuit which could take upwards of a year and a half; he said we are supposed to be welcoming people to town. Mr. Yokley said Council could be opening "Pandora's box" and allowing everyone to now go against the rules. Mr. Yokley said in attending the Zoning Board meeting he found a couple things falsified by the builder, one being that Home Savings did away with the program requiring a survey and that is not true. He said the builder lied therefore the liability is not on the Village but on the builder. Mr. Yokley stated the process states that after the foundation is complete it is to be surveyed. Mr. Cohen stated that arguing about fault will not get the homeowners into their home, and he feels Council has the power to do so by way of the proposed legislation. Mr. Cohen stated that we have the control to make sure this type of situation does not occur in the future. Mr. Cohen stated there is legislation on the table tonight for a similar situation. Monteleone stated there is a house for sale on Vine St., when it was surveyed they found that the garage is built partially on a platted alleyway (he said it could never actually be an alley as the property goes down into a creek bed) which is the reason for tonight's legislation. Mr. Cohen made a motion to have the Law Director draw legislation that would include the encroachment agreement for 130 Concord Dr. Mr. Todd stated he was originally told the house was built on the right of way but that does not appear to be the case. Building Inspector John Simon stated it is built on a utility easement, he said the yard requirement for the property are 50 ft for front yard (the property is on a corner lot so the front is technically Concord and Champagne) and that is from the right of way line which would be 18 ft from the curb so technically it should have been 68 ft from the curb on Concord and Champagne. He said the asked for a variance on the Concord side of 40 ft from the curb which would be 28 ft closer than was allowed and 30 ft from the curb on Champagne which would be 38 ft closer than allowed and that is what was granted and the was actually build 27 ½ ft on Champagne so it is 2 ½ ft on the utility easement. In reference to Mr. Cohen previous motion Mr. Simpson asked that the encroachment agreement be amended to read a cost of \$2000.00 instead of \$500.00, more as incentive to keep this from happening again. Mr. Simpson stated he feels we will stop this from happening on future new construction, he doesn't feel we can keep them from being in the home and he also doesn't seem them walking away from \$250,000.00

home, he feels it's been a comedy of errors from the beginning and it needs put to bed. He stated as much as it pains him, he will agree to the legislation/agreement. Building Inspector John Simon asked how Council can do this if there is nothing that states it can be taken to Council for an appeal. Mr. Simpson and Mr. Cohen stated that will be addressed. Law Director Dave Powers stated that Council has inherent authority to manage the affairs of the Village. Mr. Cohen stated that Council has the right to grant interest in real property. Mr. Walker stated the contractor is the one in violation not the property owner. Mr. Cohen & Simpson stated that they (Kotch's) deal with the contractor. To clarify, Mr. Simpson made a motion for the Law Director to draw legislation for 130 Concord Dr. along with an amended encroachment agreement with a fee of \$2000.00 included, Mr. Cohen seconded the motion. Mr. Cohen, Mr. Hall, Mr. Simpson, Mr. Todd, Mr. Yokley were in favor, Mr. Walker was opposed. Motion passed 5 to 1.

LAW DIRECTOR: Atty. Powers stated he gave Council a handout pertaining to the powers of the Building Inspector. He stated the Zoning Board repeatedly brought up was how to stop this from happening again, he said we do not need to change anything. He stated the Zoning Inspector has the right to adopt rules consistent with the Zoning Code and also that we have the right to require a plot diagram with any new construction within the Village which should include accurate pinning as to where the new construction will be located. If we do that, it should prevent future occurrences and if someone constructs in violation of what was provided there is no question. He said we currently have codes in place to prevent this from happening again however we may need to clean up our requirements for building permits and he would be happy to work the Mr. Simon and Manager Monteleone on that. In reference to the Big Dogs Building Atty. Powers stated that the Building Inspector John Simon has sent out all the required notices for us to take action to demolish the building. He said that after reviewing case law there needs to be an appeals process and that could be appealed to the Village Manager. He said he will draft a new letter to be used in this case and in the future, the letter would there has been an order issued, the property has been condemned and we are going to tear it down unless you file an appeal with the Village Manager. He stated it will take another 30 days but from a legal standpoint he will feel more comfortable.

STREET: NO REPORT

SAFETY/PARK/REC/CEM: NO REPORT

DEVELOPMENT: NO REPORT

UTILTIY: NO REPORT

FINANCE: NO REPORT

VISITORS: Sgt. Brian Moore, John Simon, John & Dot Herbert, Jerry Coblentz, Jim Williams, Chief Josh Brown, Chief Jim Brown, Rick Gorby, Jon Rettig Jr., Kay Gostea, Terri Ward, John Jurjavcic, Denny Griffith, John Davis, Don Johnson, Katie White.

THERE WERE NO VISITORS COMMENTS ON CURRENT LEGISLATION

LEGISLATION: Mr. Simpson introduced Res. 1-2018 and made a motion that it be read by title only seconded by Mr. Cohen. **A resolution authorizing encroachment agreement of Village owned property.** (98 Vine St.). Mr. Cohen questioned if this resolution should be an emergency. Manager Monteleone stated in speaking with everyone involved that as long as they have the vote the resolution passes they can proceed and that the 30 day waiting period does not affect them moving forward. Mr. Simpson called for a vote on Res. 1-2018. Mr. Cohen-y, Mr. Hall-y, Mr. Simpson-y, Mr. Todd-y, Mr. Walker-y, Mr. Yokley-Abstain. Resolution passed 5 YES and 1 abstain.

ADJOURN: Mr. Cohen made a motion to adjourn, seconded by Mr. Walker. All in favor, meeting adjourned.